

Supreme Court, U. S.
FILED

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-1663

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC., a
NON-PROFIT FLORIDA CORPORATION, *Petitioner*

v.

DAVID B. WALRATH, *Respondent*

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA**

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of Animals, Inc.*

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No. _____

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC., a
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v.

DAVID B. WALRATH, *Respondent*

—
**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA**
—

The Society for the Welfare of Animals, Inc., a non-profit Florida corporation, petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida, entered November 30, 1977.

DECISIONS BELOW

The opinion of the Florida Supreme Court and order on petition for rehearing are included in our appendix. The decision of the intermediate appellate court, the District Court of Appeal of Florida, Third District, is found at 343 So.2d 934 and in the appendix. The final decree from the trial court, the Circuit Court, Eleventh Judicial Circuit of Florida, for Dade County, Florida, is also included in the appendix.

JURISDICTION

Petition for rehearing was timely filed. It was denied by the Supreme Court on April 5, 1978. The jurisdiction of this court is invoked under 28 U.S.C. 1257(3).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This action involves Florida Statutes 474.031(13) (1975), which defines unprofessional or unethical conduct of a veterinarian to include objectionable advertising. Also involved is the First Amendment to the United States Constitution.

QUESTION PRESENTED

Whether the prohibition of a non-profit Florida corporation, which operates a veterinary clinic and employs a licensed veterinarian from advertising the availability and cost of its services by Florida Statutes 474.031(13) (1975) violates the First Amendment rights of that corporation?

STATEMENT OF THE CASE

Petitioner, is a non-profit corporation that at all times operated a clinic in Miami, Florida where pet dogs and cats were neutered or spayed. It employed a licensed veterinarian to perform those operations.

Respondent, is a licensed veterinarian who instituted this action by suit in the Dade County, Circuit Court to enjoin petitioner from advertising its services in the public media. After a non-jury trial, on June 18, 1976, the trial court entered its final decree restraining petitioner from advertising on television, radio, news papers and limiting its advertising only to that which

might be ethically done by a Florida licensed veterinarian.

The constitutional validity of Florida Statutes 474 which seek to prohibit advertising by veterinarians, was not raised in the trial court but was presented to the intermediate appellate court in Florida, The District Court of Appeals, Third District:

The Society appeals and urges error in that they are not a corporation subject to the provisions of Ch. 474 and, further, it was error for the trial court to prohibit the advertising as same constituted an infringement on its constitutional right of freedom of speech, citing *Stadnick v. Shell's City, Inc.*, 140 So.2d 871 (Fla. 1962); *Florida Board of Pharmacy v. Webb's City, Inc.*, 219 So.2d 681 (Fla. 1969); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, — U.S. — (1976). We disagree, and affirm.

Pursuant to § 474.031(11)(c), Florida Statutes (1975), the services performed by the doctors of veterinary medicine employed by the Society were, in fact, the practice of veterinary medicine by the spaying and neutering of animals. It is conceded that a licensed doctor of veterinary medicine could not so advertise and, therefore, a corporation [even though non-profit] which employs a licensed doctor of veterinary medicine should not be permitted to advertise veterinary medical services. We find a distinction in the prohibition against advertisements of professional services, as contrasted with the advertisement of the cost of prescription drugs, the sale of which is of products prepared by others in most instances. Therefore, we find the Florida cases and the Virginia case cited by the appellant to be distinguishable.

Petition for writ of certiorari was timely taken to the Supreme Court of Florida. The petition was de-

nied by the Supreme Court of Florida on November 30, 1977 with two justices in dissent.

Petition for rehearing was timely filed and it was also denied on April 5, 1978 with the same two justices again in dissent.

REASONS FOR GRANTING THE WRIT

We submit that the decision of the Supreme Court of Florida and The District Court of Appeal of Florida, Third District, violate the First Amendment rights of the petitioner. We urge that the First Amendment entitles Florida residents who own pets to receive information that the petitioner wishes to communicate to them through advertising as to the availability of its spaying and neutering services and that those services are low-cost. We urge that the United States Constitution must free the petitioner to so advertise its services.

This Court has held that commercial speech, which serves individual and societal interest in assuring informed and reliable decision making, is entitled to some First Amendment protection. *Virginia Pharmacy Board v. Virginia Consumer Council*, 96 S.Ct. 1817; *Bates v. State Bar of Arizona*, 97 S.Ct. 2691 (1977).

In *Virginia Pharmacy Board*, this Court declared that a pharmacist was entitled under the First Amendment to advertise prescription drug price information against a statute declaring such advertising was "unprofessional conduct".

In *Bates v. State Bar of Arizona*, *supra*, this Court held that advertising routine legal services by an attorney also fell within the scope of First Amendment protection.

We urge that the First Amendment entitles the petitioner to advise the public of the availability of its low-cost veterinary services. The petitioner is not in business to enrich itself but operate its clinic as a public service.

CONCLUSION

We submit the issue raised herein is of such national significance as to warrant this Court's review of the erroneous decisions below. A writ of certiorari should, we urge, be issued to the Florida Supreme Court to review that decision.

Respectfully submitted,

MICHAEL A. LIPSKY, P.A.
28 West Flagler Street
Suite 550
Miami, Florida 33130

*Attorney for Petitioner,
The Society for the Welfare
of Animals, Inc.*

APPENDIX

Order, Dade County Court

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR DADE COUNTY

GENERAL JURISDICTION DIVISION

CASE No. 75-13473

DIVISION No. 05

DAVID B. WALRATH, D.V.M., *Plaintiff*,

vs.

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
LOUIS HORVATH, D.V.M., and BING ALHERING, D.V.M.,
Defendants.

Final Decree

This cause came on regularly for trial before the court sitting without a jury on June 4, 1976, CHARLES A. HAYES appeared as counsel for the plaintiff, and DAVID J. WHITE appeared as counsel for the defendant, and the court having heard the testimony and having examined the proofs offered by the respective parties, and the court being fully advised in the premises and having directed that judgment be entered in accordance therewith; now, therefore, by reason of the law and findings aforesaid:

It is hereby ORDERED, ADJUDGED and DECREED that the defendant, his employees, servants, agents, and members be, and they are hereby, perpetually enjoined and restrained from all objectionable advertising, including but not limited to, advertising on television, radio, and newspapers in violation of F.S. 474 and Rules implemented thereunder as applied to the practice of Veterinary medicine. It is the purpose and intent of this Order to restrain and limit all advertising by the defendant to that which may ethically be done by a Veterinarian duly licensed to practice in the

APPENDIX

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State of Florida. The defendant is specifically restrained from the advertising of fees charged for services or the advertising of so called "low cost" fees for services.

ORDERED at Miami, Dade County, Florida on June 18, 1976.

JAMES W. KEHOE
Circuit Judge

CHARLES A. HAYES, Esq.
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Copies furnished to:

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3a

Opinion, District Court of Appeal of Florida, Third District

The SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
Appellant,

v.

DAVID B. WALRATH, Appellee.

No. 76-1372.

March 15, 1977.

Rehearing Denied April 13, 1977.

Action was brought to enjoin nonprofit corporation from advertising what was alleged to be services of veterinary medicine. The Circuit Court, Dade County, James W. Kehoe, J., granted injunction and defendant appealed. The District Court of Appeals held that spaying and neutering of animals by doctors of veterinary medicine employed by nonprofit corporation constituted practice of veterinary medicine and, since licensed doctors of veterinary medicine could not advertise such practice, the corporation would not be permitted to do so, and the prohibition against such advertising did not improperly infringe on corporation's constitutional right of freedom of speech.

Affirmed.

Constitutional Law
Physicians and Surgeons

Spaying and neutering of animals by doctors of veterinary medicine employed by nonprofit corporation constituted practice of veterinary medicine and, since licensed doctors of veterinary medicine could not advertise such practice, the corporation would not be permitted to do so;

prohibition against such advertising did not improperly infringe on corporation's constitutional right of freedom of speech. West's F.S.A. §§ 474.01 et seq., 474.031(11)(c).

Michael A. Lipsky, Miami Beach, Robert L. Shevin, Atty. Gen., and Carol L. Reilly, Asst. Atty. Gen., Tallahassee, for appellant.

Charles A. Hayes, Homestead, for appellee.

Before PEARSON and BARKDULL, JJ., and CHARLES CARROLL (Ret.), Associate Judge.

PER CURIAM.

The instant action was begun in the trial court to enjoin The Society for the Welfare of Animals, Inc., a non-profit corporation, from advertising what was alleged to be services of veterinary medicine. Upon final hearing, the trial judge entered an order which reads, in part, as follows:

* * * * *

"It is hereby ORDERED, ADJUDGED and DECREED that the defendant, his employees, servants, agents, and members be, and they are hereby, perpetually enjoined and restrained from all objectionable advertising, including but not limited to, advertising on television, radio, and newspapers in violation of F.S. 474 and Rules implemented thereunder as applied to the practice of Veterinary medicine. It is the purpose and intent of this Order to restrain and limit all advertising by the defendant to that which may ethically be done by a Veterinarian duly licensed to practice in the State of Florida. The defendant is specifically restrained from the advertising of fees charged for services or the advertising of so called 'low cost' fees for services."

* * * * *

The Society appeals and urges error in that they are not a corporation subject to the provisions of Ch. 474 and, further, it was error for the trial court to prohibit the advertis-

ing as same constituted an infringement on its constitutional right of freedom of speech, citing *Stadnik v. Shell's City, Inc.*, 140 So.2d 871 (Fla.1962); *Florida Board of Pharmacy v. Webb's City, Inc.*, 219 So.2d 681 (Fla.1969); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). We disagree, and affirm.

Pursuant to § 474.031(11)(c), Florida Statutes (1975), the services performed by the doctors of veterinary medicine employed by the Society were, in fact, the practice of veterinary medicine by the spaying and neutering of animals. It is conceded that a licensed doctor of veterinary medicine could not so advertise and, therefore, a corporation [even though non-profit] which employs a licensed doctor of veterinary medicine should not be permitted to advertise veterinary medical services. We find a distinction in the prohibition against advertisements of professional services, as contrasted with the advertisement of the cost of prescription drugs, the sale of which is of products prepared by others in most instances. Therefore, we find the Florida cases and the Virginia case cited by the appellant to be distinguishable.

Therefore, for the reasons above stated, the limited injunction imposed by the trial judge be and the same is hereby affirmed.

Affirmed.

Denial of Petition for Rehearing

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
 THIRD DISTRICT
 JANUARY TERM, A.D. 1977
 WEDNESDAY, APRIL 13, 1977
 CASE No. 76-1372

THE SOCIETY FOR THE WELFARE OF ANIMALS, INC.,
Appellant,
 VS.

DAVID B. WALRATH, *Appellee.*

Counsel for appellant having filed in this cause petition for rehearing and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
 Clerk District Court of
 Appeal, Third District

By ILLEGIBLE

Chief Deputy Clerk

cc: Michael A. Lipsky
 Charles A. Hayes
 Carol L. Reilly
 /plc

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY
 BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT
 COURT IN AND FOR DADE COUNTY, FLORIDA)

Order Denying Petition for Writ of Certiorari

SUPREME COURT OF FLORIDA
 WEDNESDAY, NOVEMBER 30, 1977
 CASE No. 51,570
 DISTRICT COURT OF APPEAL, THIRD DISTRICT
 76-1372

SOCIETY FOR THE WELFARE OF ANIMALS, INC., etc., *Petitioner,*
 VS.

DAVID B. WALRATH, *Respondent.*

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ADKINS, ENGLAND, SUNDBERG and KARL, JJ., concur.

BOYD and HATCHETT, JJ., dissent.

A True Copy

TEST:

Sid J. White
 Clerk Supreme Court

By: Tanya Carroll
 Deputy Clerk

TC

cc: Hon. Louis J. Spallone, Clerk
 Hon. James W. Kehoe, Judge
 Hon. Richard P. Brinkler, Clerk
 Michael A. Lipsky, Esquire
 Charles Hayes, Esquire

Order Denying Petition for Rehearing

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, APRIL 5, 1978

CASE No. 51,570

District Court of Appeal, Third District

76-1372

SOCIETY FOR THE WELFARE OF ANIMALS, INC., etc., *Petitioner*,

v.

DAVID B. WALBATH, *Respondent*.

On consideration of the petition for rehearing filed by attorney for petitioner, and reply thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

OVERTON, C.J., ADKINS, ENGLAND, SUNDBERG and KARL, JJ., concur.

BOYD and HATCHETT, JJ., dissent.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

By: Dublin Causseaux
Deputy Clerk

TC

cc: Hon. Louis J. Spallone, Clerk
Hon. James W. Kehoe, Judge
Hon. Richard P. Brinkler, Clerk
Michael A. Lipsky, Esquire
Charles Hayes, Esquire